

**2005 DRAFTING REQUEST**

**Bill**

Received: **10/28/2005**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Patricia Strachota (608) 264-8486**

By/Representing: **Sara Buschman**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact: **Dick Sweet; Laurie Kuiper (Auror**

Addl. Drafters:

Subject: **Mental Health - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Strachota@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

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**Topic:**

Mental health treatment and registration records

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 12/27/2005	lkunkel 12/28/2005		_____			S&L
/1			chaugen 12/28/2005	_____	sbasford 12/28/2005		S&L
/2	dkennedy 01/18/2006	lkunkel 01/23/2006	chaugen 01/23/2006	_____	mbarman 01/23/2006		S&L
/3	dkennedy	lkunkel	jfrantze	_____	lnorthro		S&L

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/4	dkennedy 02/21/2006	lkunkel 02/21/2006	rschluet 02/21/2006	_____ _____	sbasford 02/21/2006		S&L
/5	dkennedy 02/28/2006	lkunkel 02/28/2006	pgreensl 02/28/2006	_____ _____	lemery 02/28/2006	sbasford 03/03/2006	

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### Pre Topic:

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### Instructions:

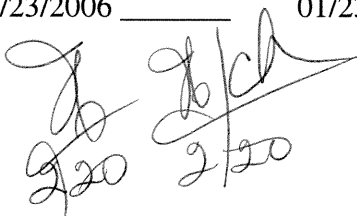
See Attached

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2/20 2/20

FE Sent For:

<END>

12/29/2005

Handwritten note:

paper copy re-sent  
(with missing D-Note  
added) 12-29-05  
9MB

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/?	dkennedy	1/mk 12/28	ch 12/28	ch 12/28			

FE Sent For:

&lt;END&gt;

**Kennedy, Debora**

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**From:** Buschman, Sara  
**Sent:** Friday, October 28, 2005 11:23 AM  
**To:** Kennedy, Debora  
**Cc:** 'laurie.kuiper@aurora.org'  
**Subject:** Drafting request from Rep. Strachota per voice mail  
**Attachments:** Ch51 Revisions.doc

Debora,

Per my voice mail, attached is the proposed changes we would like to make to Ch. 51.30. If you have any questions, feel free to talk to Dick Sweet, myself or Laurie Kuiper of Aurora (Phone: 414-647-6390 - E-mail: [laurie.kuiper@aurora.org](mailto:laurie.kuiper@aurora.org)).

Thanks!

Sara

**Sara Buschman**  
Legislative Aide to  
State Representative Pat Strachota  
58th Assembly District

*Toll-Free: 1-888-534-0058*  
*Email: [sara.buschman@legis.state.wi.us](mailto:sara.buschman@legis.state.wi.us)*

10/28/2005

## Proposed Revisions to WI 51.30

[Note: Changes would also be required to parallel provisions in HFS 92.01.]

### Proposed Revision #1:

51.30 (1) DEFINITIONS. In this section:

(a) "Registration records" include all the records of the department, county departments under s. 51.42 or 51.437, treatment facilities, and other persons providing services to the department, county departments or facilities are created in the course of providing services for mental illness, developmental disabilities, alcoholism or drug dependence.

**Deleted:** which identify individuals who are receiving or who at any time have received

(b) "Treatment records" include the registration and all other records created in the course of providing services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437 and their staffs, and by treatment facilities. Such records do not include notes or records maintained for personal use by an individual providing treatment services for the department, county department under S. 51.42 or 51.437, or a treatment facility if such notes or records are not available to others.

**Deleted:** concerning individuals who are receiving or who at any time have received

**Rationale:** The existing language implies that the protections afforded by 51.30 apply to the individual, not to specific records. This means once an individual has been treated for a behavioral health condition, all subsequent treatment encounters for non-related medical conditions are also governed by this chapter. This is impracticable, and, if complied with, will further impede the delivery of safe and high quality health care as discussed in more detail below.

### Proposed Revision #2:

51.30(4)(b)6. To health care providers and their staffs, including individuals serving in bona fide training programs or individuals participating in supervised volunteer programs, for the purpose of providing treatment services to the individual.

**Deleted:** Within the treatment facility where the subject individual is receiving treatment, confidential information may be disclosed to individuals employed

**Rationale:** Providing treatment services to a patient with limited or no information regarding behavioral health conditions and treatment places the patient at risk for inadequate and unsafe care. For example, a known behavioral health condition may impact the diagnostic evaluation and outcome of a primary care physician or specialist. In addition, the individual may be taking medications that are contraindicated with the course of treatment about to be prescribed by the primary care physician or specialist. The existing language of 51.30 implies that past history is only relevant in limited circumstances. It also implies that only a licensed physician needs an individual's health information in order to provide treatment services. In today's health care environment, physician extenders, nurses, pharmacists, and various other disciplines need patient information in order to provide safe and high quality health care.

**Deleted:** at the facility when and to the extent that performance of their duties requires that they have access to such information.

**Deleted:** 8. To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Such disclosure shall be limited to that part of the records necessary to meet the medical emergency.

The existing language of 51.30 virtually prohibits the efficacious sharing of patient information via computerized patient records and clinical information systems that are designed to promote immediate access to information to aid in the care of the patient. This will also serve to impede efforts for community health information organizations (RHIO's) and other efforts related to the establishment of the National Health Information Infrastructure (NHII). Finally, this provision serves to stigmatize behavioral health conditions rather than treat them as any other illness or condition.

An alternative approach with a more limited result would be to include an integrated delivery system in the definition of "treatment facility" in 51.01(19). This would at least allow for the coordination of both mental health and medical care within an integrated delivery system without first obtaining written consent from the patient. This approach may be more acceptable to some, in that patient consent is still required to release information outside of the organization.



THURSDAY, 12/29/05

State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-3958/2

DAK:.....

D-NOTE

Imk

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

BenCat

✓

- 1 AN ACT ...; relating to: registration and treatment records for services for mental  
2 illness, developmental disability, alcoholism, or drug dependence and  
3 exceptions to confidentiality for treatment records. ✓

---

***Analysis by the Legislative Reference Bureau***

Under current law relating to mental health, developmental disability, alcoholism, and drug dependence, "registration records" are defined to include all records of the Department of Health and Family Services (DHFS), county departments of developmental disabilities services and community programs, treatment facilities, and other persons who provide services to those entities, that identify individuals who are receiving or have received services for mental illness, developmental disability, alcoholism, or drug dependence. ✓ "Treatment records" are defined to include registration records and all other records concerning individuals receiving or who have received the services; however, treatment records do not include notes or records maintained for personal use by a treatment service provider if the notes or records are not available to others. ✓ Treatment records are confidential and privileged to the subject individual, except that they may be released without the individual's informed consent to numerous persons and in numerous circumstances. ✓ One of these exceptions concerns release to individuals who are employed, serving in bona fide training programs, or participating in supervised volunteer programs within a treatment facility where the subject individual is receiving treatment. ✓ Another exception concerns release to a licensed physician who determines that the life or health of the subject is in danger and that treatment without the information in the treatment record could be injurious to the subject's

health. This exception is limited to that part of the records that is necessary to meet the medical emergency. ✓

This bill changes the definition of “registration records” to include all records of DHFS, county departments, treatment facilities, and other persons providing services to these entities that are created in the course of providing services for mental illness, developmental disability, alcoholism, or drug dependence, and changes the definition of “treatment records” similarly. ✓ The bill changes the exception concerning release of treatment records within a treatment facility to provide the exception generally to health care providers and health care provider staff, including persons serving in training programs or participating in supervised volunteer programs, in order to provide treatment or other health care to an individual. Lastly, the bill eliminates the exception concerning release of treatment records that relates to release to a licensed physician in a medical emergency. ✓

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 51.30 (1) (a) of the statutes is amended to read:

2           51.30 (1) (a) “Registration records” include all the records of the department,  
3           county departments under s. 51.42 or 51.437, treatment facilities, and other persons  
4           providing services to the department, county departments, or treatment facilities  
5           ~~which identify individuals who are receiving or who at any time have received, that~~  
6           are created in the course of providing services to individuals for mental illness,  
7           developmental disabilities, alcoholism, or drug dependence. ✓

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25.

8           **SECTION 2.** 51.30 (1) (b) of the statutes is amended to read:

9           51.30 (1) (b) “Treatment records” include the registration and all other records  
10          ~~concerning individuals who are receiving or who at any time have received that are~~  
11          created in the course of providing services to individuals for mental illness,  
12          developmental disabilities, alcoholism, or drug dependence ~~which~~ and that are  
13          maintained by the department, by county departments under s. 51.42 or 51.437 and



1 their staffs, and by treatment facilities. Such Treatment records do not include notes  
2 or records maintained for personal use by an individual providing treatment services  
3 for the department, a county department under s. 51.42 or 51.437, or a treatment  
4 facility, if such the notes or records are not available to others.

**History:** 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25.

5 **SECTION 3.** 51.30 (4) (b) 6. of the statutes is amended to read:

6 51.30 (4) (b) 6. ~~Within the treatment facility where the subject individual is~~  
7 ~~receiving treatment confidential information may be disclosed to individuals~~  
8 ~~employed, individuals~~ To a health care provider, as defined in s. 146.81 (1), and staff  
9 of a health care provider, including persons serving in bona fide training programs  
10 or individuals participating in supervised volunteer programs, ~~at the facility when~~  
11 ~~and to the extent that performance of their duties requires that they have access to~~  
12 such information in order to provide treatment or other health care to an individual.

**History:** 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25.

13 **SECTION 4.** 51.30 (4) (b) 8. of the statutes is repealed.

14 (END)

D-NOTE

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3958/?dn

DAK:.....

(date)

✓  
To Sara Buschman:

The definition of "health care provider" that I used in amending s. 51.30 (4) (b) 6., stats., is very broad. Does this meet your intent? ✓ ✓

Please let me know if I can provide you with any further assistance with regard to this draft. ✓

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3958/1dn

DAK:lmk:ch

December 28, 2005

To Sara Buschman:

The definition of "health care provider" that I used in amending s. 51.30 (4) (b) 6., stats., is very broad. Does this meet your intent?

Please let me know if I can provide you with any further assistance with regard to this draft.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: [debora.kennedy@legis.state.wi.us](mailto:debora.kennedy@legis.state.wi.us)

## Kennedy, Debora

---

**From:** Buschman, Sara  
**Sent:** Monday, January 09, 2006 4:44 PM  
**To:** Kennedy, Debora  
**Subject:** LRB 3958

Debora,

Below is the feedback we received on LRB 3958 re Ch 51 changes. I am not sure what your thoughts are on the comments. I have also sent this to Dick Sweet to see if he has any thoughts and in case you have any questions.

Sara

**Sara Buschman**  
Legislative Aide to  
State Representative Pat Strachota  
58th Assembly District

*Toll-Free: 1-888-534-0058*  
*Email: sara.buschman@legis.state.wi.us*

---

**To:** Buschman, Sara  
**Subject:** Ch. 51 legislation

We've reviewed the Ch. 51 bill draft and have one correction. As drafted, the bill actually narrows the use of information, even within a treatment facility, to treatment only. In other words, while the bill opens up the allowance to all health care providers, it also inadvertently narrows how the provider creating the information can use it. The current draft would actually hurt us from the standpoint of performing billing, quality improvement, and other activities necessary to run our business.

*What about  
51.30(4)(b)2.?*

To fully align state law with federal HIPAA law, suggest the following simple fix:

- Remove Section 3. of the bill, thereby keeping 51.30(4)(b)6. exactly as it is today.
- Change Section 4 as follows:

51.30(4)(b)8. of the statutes is amended to read:

51.30(4)(b)8. To a ~~licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Such disclosure shall be limited to that part of the records necessary to meet the medical emergency~~ health care provider, as defined in s. 146.81 (1), and staff of a health care provider in order to provide treatment or other health care to an individual.

If the bill is amended in this way, there is actually less change to the statute. We retain current allowances for activities within the treatment facility, and we replace the emergency disclosure allowance with a general allowance for all treatment situations.

01/09/2006

The rest of the bill looks great. You should also confirm that Admin Code HFS 92 is reviewed to make sure there are no conflicts with the proposed changes. We already took a look at HFS 92 and nothing jumped out at but you should probably ask the drafter to do the same, if she hasn't already.

1/18/06 DAK called Nancy Vott 414-647-3115 -  
she understands billing provided under 51.30  
(4) (b) 2.



SOON - Inedit 1/18  
State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-3958/1 2

DAK:lmk:ch

↑  
SKYS

## 2005 BILL

- 1 AN ACT *to repeal* 51.30 (4) (b) 8.; and *to amend* 51.30 (1) (a), 51.30 (1) (b) and  
2 51.30 (4) (b) 6. of the statutes; **relating to:** registration and treatment records  
3 for services for mental illness, developmental disability, alcoholism, or drug  
4 dependence and <sup>an</sup> exceptions to confidentiality for treatment records.

### *Analysis by the Legislative Reference Bureau*

Under current law relating to mental health, developmental disability, alcoholism, and drug dependence, "registration records" are defined to include all records of the Department of Health and Family Services (DHFS), county departments of developmental disabilities services and community programs, treatment facilities, and other persons who provide services to those entities, that identify individuals who are receiving or have received services for mental illness, developmental disability, alcoholism, or drug dependence. "Treatment records" are defined to include registration records and all other records concerning individuals receiving or who have received the services; however, treatment records do not include notes or records maintained for personal use by a treatment service provider if the notes or records are not available to others. Treatment records are confidential and privileged to the subject individual, except that they may be released without the individual's informed consent to numerous persons and in numerous circumstances. One of these exceptions concerns release to individuals who are employed, serving in bona fide training programs, or participating in supervised volunteer programs within a treatment facility where the subject individual is receiving treatment. Another exception concerns release to a licensed physician who

**BILL**

any  
to a licensed physician  
in a medical emergency

determines that the life or health of the subject is in danger and that treatment without the information in the treatment record could be injurious to the subject's health. This exception is limited to that part of the records that is necessary to meet the medical emergency.

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For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 51.30 (1) (a) of the statutes is amended to read:

2           51.30 (1) (a) "Registration records" include all the records of the department,  
3 county departments under s. 51.42 or 51.437, treatment facilities, and other persons  
4 providing services to the department, county departments, or treatment facilities  
5 ~~which identify individuals who are receiving or who at any time have received, that~~  
6 are created in the course of providing services to individuals for mental illness,  
7 developmental disabilities, alcoholism, or drug dependence.

8           **SECTION 2.** 51.30 (1) (b) of the statutes is amended to read:

9           51.30 (1) (b) "Treatment records" include the registration and all other records  
10 ~~concerning individuals who are receiving or who at any time have received~~ that are  
11 created in the course of providing services to individuals for mental illness,  
12 developmental disabilities, alcoholism, or drug dependence ~~which~~ and that are  
13 maintained by the department, by county departments under s. 51.42 or 51.437 and

**BILL**

1 their staffs, and by treatment facilities. ~~Such~~ Treatment records do not include notes  
2 or records maintained for personal use by an individual providing treatment services  
3 for the department, a county department under s. 51.42 or 51.437, or a treatment  
4 facility, if ~~such~~ the notes or records are not available to others.

5 **SECTION 3.** 51.30 (4) (b) 6. of the statutes is amended to read:

6 51.30 (4) (b) 6. Within the treatment facility where the subject individual is  
7 ~~receiving treatment confidential information may be disclosed to individuals~~  
8 ~~employed, individuals~~ To a health care provider, as defined in s. 146.81 (1), and staff  
9 of a health care provider, including persons serving in bona fide training programs  
10 or individuals participating in supervised volunteer programs, at the facility when  
11 and to the extent that performance of their duties requires that they have access to  
12 such information in order to provide treatment or other health care to an individual.

13 **SECTION 4.** 51.30 (4) (b) 8. of the statutes is repealed.

14

(END)

INSERT 3-13



**2005-2006 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3958/2ins  
DAK:lmk:ch

✓ **INSERT 3-13**

1           **SECTION 1.** 51.30 (4) (b) 8. of the statutes is amended to read:

2           51.30 (4) (b) 8. ~~To a licensed physician who has determined that the life or~~  
3 ~~health of the individual is in danger and that treatment without the information~~  
4 ~~contained in the treatment records could be injurious to the patient's health. Such~~  
5 ~~disclosure shall be limited to that part of the records necessary to meet the medical~~  
6 ~~emergency~~ health care provider, as defined in s. 146.81 (1), and staff of a health care  
7 provider, in order to provide treatment or other health care to an individual. ✓

**History:** 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25.

## Kennedy, Debora

---

**From:** Buschman, Sara  
**Sent:** Wednesday, February 15, 2006 4:21 PM  
**To:** Kennedy, Debora  
**Subject:** Change to LRB 3958/2

**Importance:** High

**Attachments:** Changes to LRB.doc



Changes to  
LRB.doc (28 KB)

Debora,

Per my voice mail here is the memo from Dick outlining the (hopefully final) change we need to 3958.

Thanks!!

Sara

Sara Buschman  
Legislative Aide to  
State Representative Pat Strachota  
58th Assembly District

Toll-Free: 1-888-534-0058  
Email: sara.buschman@legis.state.wi.us

-----Original Message-----

From: Sweet, Richard  
Sent: Wednesday, February 15, 2006 4:08 PM  
To: Buschman, Sara  
Subject: FW: FW: Proposed Change to 51.30

Sara,

The attached Word document now has all the changes to LRB-3958/2.

Dick

Changes to LRB-3958/2, on page 3, starting on line 4:

51.30(4) (b) 8. ~~To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health.~~ For a medical emergency when the health care provider is unable to obtain the patient's informed consent due to the patient's condition or the nature of the emergency. Such disclosure shall be limited to that part of the records necessary to meet the medical emergency.

Create-- s. 51.30 (4) (b) 8s. To health care providers within related health care entities when necessary for the current treatment of the patient. In this subdivision, "related health care entities" means entities that are within a clinically integrated care setting in which individuals typically receive health care from more than one health care provider, or an organized system of health care in which the participating health care providers hold themselves out to the public as participating in a joint arrangement and participate in joint activities.

A definition of "health care provider" would be created in s. 51.30 (1) by referencing the definition in s. 146.81(1).

Keep SECTIONS 1 and 2 of the draft.

Strike the last sentence of current s. 51.30 (9) (a). [This eliminates the good faith exception.]



TUESDAY  
State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-3958/2 3

DAK:lmk:ch

↑  
stays

## 2005 BILL

and a good faith  
exception to  
liability for  
release of records  
by a record  
custodian

REGENERATE

- 1 AN ACT *to amend* 51.30 (1) (a), 51.30 (1) (b) and 51.30 (4) (b) 8. of the statutes;  
2 relating to: registration and treatment records for services for mental illness,  
3 developmental disability, alcoholism, or drug dependence and an exception to  
4 confidentiality for treatment records.

### *Analysis by the Legislative Reference Bureau*

Under current law relating to mental health, developmental disability, alcoholism, and drug dependence, "registration records" are defined to include all records of the Department of Health and Family Services (DHFS), county departments of developmental disabilities services and community programs, treatment facilities, and other persons who provide services to those entities, that identify individuals who are receiving or have received services for mental illness, developmental disability, alcoholism, or drug dependence. "Treatment records" are defined to include registration records and all other records concerning individuals receiving or who have received the services; however, treatment records do not include notes or records maintained for personal use by a treatment service provider if the notes or records are not available to others. Treatment records are confidential and privileged to the subject individual, except that they may be released without the individual's informed consent to numerous persons and in numerous circumstances. One of these exceptions concerns release to a licensed physician who determines that the life or health of the subject is in danger and that treatment without the information in the treatment record could be injurious to the subject's

**BILL**

INSERT A 1

health. This exception is limited to that part of the records that is necessary to meet the medical emergency.

This bill changes the definition of “registration records” to include all records of DHFS, county departments, treatment facilities, and other persons providing services to these entities that are created in the course of providing services for mental illness, developmental disability, alcoholism, or drug dependence, and changes the definition of “treatment records” similarly. The bill changes the exception concerning release of treatment records to a licensed physician in a medical emergency to provide the exception generally to health care providers and health care provider staff, in order to provide any treatment or other health care to an individual.

INSERT A 2

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

INSERT  
2-1

1 *pschog comp.* SECTION 1. 51.30 (1) (a) of the statutes is amended to read:

renumbered 51. 30(1) (am) and

2 51.30 (1) (a) *am* “Registration records” include all the records of the department,  
3 county departments under s. 51.42 or 51.437, treatment facilities, and other persons  
4 providing services to the department, county departments, or treatment facilities  
5 which identify individuals who are receiving or who at any time have received, that  
6 are created in the course of providing services to individuals for mental illness,  
7 developmental disabilities, alcoholism, or drug dependence.

8 SECTION 2. 51.30 (1) (b) of the statutes is amended to read:

9 51.30 (1) (b) “Treatment records” include the registration and all other records  
10 concerning individuals who are receiving or who at any time have received that are  
11 created in the course of providing services to individuals for mental illness,  
12 developmental disabilities, alcoholism, or drug dependence which and that are  
13 maintained by the department, by county departments under s. 51.42 or 51.437 and  
14 their staffs, and by treatment facilities. Such Treatment records do not include notes  
15 or records maintained for personal use by an individual providing treatment services

**BILL**

1 for the department, a county department under s. 51.42 or 51.437, or a treatment  
2 facility, if such the notes or records are not available to others.

3 **SECTION 3.** 51.30 (4) (b) 8. of the statutes is amended to read:

4 51.30 (4) (b) 8. To a licensed physician who has determined that the life or  
5 health of the individual is in danger and that treatment without the information  
6 contained in the treatment records could be injurious to the patient's health. Such  
7 disclosure shall be limited to that part of the records necessary to meet the medical  
8 emergency health care provider, as defined in s. 146.81 (1), and staff of a health care  
9 provider, in order to provide treatment or other health care to an individual.

10

(END)

INSERT 3.9

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3958/3ins  
DAK:lmk:ch

*not*  
*The liability includes?*  
*applies to the violation of*  
**INSERT A 1**

Liability for damages ~~attaches for violating the~~ confidentiality of registration and treatment records, ~~including~~ for a violation that is not ~~required to be~~ knowing and willful, damages ~~that may be proved~~, exemplary damages of up to \$1,000 for each violation, ~~and~~ costs and reasonable actual attorneys fees. ~~A~~ custodian of records, while acting in good faith, does not incur liability for the release of registration or treatment records in accordance with the exceptions to confidentiality. ✓

*not*  
*this* *However, a*  
**INSERT A 2**

if the individual's health care provider is unable to obtain the individual's informed consent because of the individual's condition or the nature of the medical emergency. ✓ Further, the bill creates an additional exception that applies to health care providers in a related health care entity, as defined in the bill, if necessary for the treatment of the individual. ✓ Lastly, the bill eliminates the good faith exception to liability for release of registration or treatment records by a record custodian. ✓

**INSERT 2-1**

**SECTION 1.** 51.20 (1) (ag) of the statutes is created to read:

51.20 (1) (ag) "Health care provider" has the meaning given in s. 146.81 (1).

**INSERT 3-9**

**SECTION 2.** 51.30 (4) (b) 8. of the statutes is amended to read:

51.30 (4) (b) 8. ~~To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Such disclosure~~ For treatment of the individual in a medical emergency if the individual's health care provider is unable to obtain the individual's informed consent because of the individual's condition or the nature of the medical emergency. ✓ Disclosure under this subdivision ✓ shall be limited to that part of the records necessary to meet the medical emergency. ✓

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25.

**SECTION 3.** 51.30 (4) (b) 8g. of the statutes is created to read:

1           51.30 (4) (b) 8g. To health care providers in a related health care entity, if  
2 necessary for the treatment of the individual. In this subdivision, "related health  
3 care entity" means one of the following:

4           a. An entity that is within a clinically integrated care setting in which  
5 individuals typically receive health care from more than one health care provider. ✓

6           b. An organized system of health care in which the health care providers hold  
7 themselves out to the public as participating in a joint arrangement and jointly  
8 participate in activities. ✓

9           **SECTION 4.** 51.30 (9) (a) of the statutes is amended to read:

10          51.30 (9) (a) Any person, including the state or any political subdivision of the  
11 state, violating this section shall be liable to any person damaged as a result of the  
12 violation for such damages as may be proved, together with exemplary damages of  
13 not more than \$1,000 for each violation and such costs and reasonable actual  
14 attorney fees as may be incurred by the person damaged. ~~A custodian of records~~  
15 ~~incurs no liability under this paragraph for the release of records in accordance with~~  
16 ~~this section while acting in good faith.~~ ✓

**History:** 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25.



## TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE:

2/21/06

CONVERSATION  
WITH:

Sara

OF:

Strachota's office

TELEPHONE NO:

4-8486

REGARDING LRB #  
OR DRAFT TOPIC:

INSTRUCTIONS:

3958/3

Redraft:

- ① p. 2, l. 1. shld be 51<sup>30</sup>
- ② p. 3, l. 17 - change "the individual's"  
to "a"
- ③ p. 3, l. 24 - insert "current" before  
treatment



*TODAY, if possible*  
State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-3958/34

DAK:lmk:j

↑  
shys

## 2005 BILL

*ReGen*

✓+

- 1 AN ACT *to renumber and amend* 51.30 (1) (a); *to amend* 51.30 (1) (b), 51.30 (4)  
2 (b) 8. and 51.30 (9) (a); and *to create* 51.20 (1) (ag) and 51.30 (4) (b) 8g. of the  
3 statutes; **relating to:** registration and treatment records for services for  
4 mental illness, developmental disability, alcoholism, or drug dependence,  
5 exceptions to confidentiality for treatment records, and a good faith exception  
6 to liability for release of records by a record custodian.

---

### *Analysis by the Legislative Reference Bureau*

Under current law relating to mental health, developmental disability, alcoholism, and drug dependence, "registration records" are defined to include all records of the Department of Health and Family Services (DHFS), county departments of developmental disabilities services and community programs, treatment facilities, and other persons who provide services to those entities, that identify individuals who are receiving or have received services for mental illness, developmental disability, alcoholism, or drug dependence. "Treatment records" are defined to include registration records and all other records concerning individuals receiving or who have received the services; however, treatment records do not include notes or records maintained for personal use by a treatment service provider if the notes or records are not available to others. Treatment records are confidential and privileged to the subject individual, except that they may be released without the individual's informed consent to numerous persons and in numerous

**BILL**

circumstances. One of these exceptions concerns release to a licensed physician who determines that the life or health of the subject is in danger and that treatment without the information in the treatment record could be injurious to the subject's health. This exception is limited to that part of the records that is necessary to meet the medical emergency. Liability for damages applies to the violation of confidentiality of registration and treatment records. The liability includes, for a violation that is not knowing and willful, damages, exemplary damages of up to \$1,000 for each violation, costs, and reasonable actual attorneys fees. However, a custodian of records, while acting in good faith, does not incur this liability for the release of registration or treatment records in accordance with the exceptions to confidentiality.

This bill changes the definition of "current registration records" to include all records of DHFS, county departments, treatment facilities, and other persons providing services to these entities that are created in the course of providing services for mental illness, developmental disability, alcoholism, or drug dependence, and changes the definition of "treatment records" similarly. The bill changes the exception concerning release of treatment records to a licensed physician in a medical emergency to provide the exception if ~~the individual's~~ <sup>a</sup> health care provider is unable to obtain the individual's informed consent because of the individual's condition or the nature of the medical emergency. Further, the bill creates an additional exception that applies to health care providers in a related health care entity, as defined in the bill, if necessary for the treatment of the individual. Lastly, the bill eliminates the good faith exception to liability for release of registration or treatment records by a record custodian.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

51.30  
SECTION 1. ~~51.20~~ (1) (ag) of the statutes is created to read:

~~51.20~~ (1) (ag) "Health care provider" has the meaning given in s. 146.81 (1).

SECTION 2. 51.30 (1) (a) of the statutes is renumbered 51.30 (1) (am) and amended to read:

51.30 (1) (am) "Registration records" include all the records of the department, county departments under s. 51.42 or 51.437, treatment facilities, and other persons providing services to the department, county departments, or treatment facilities which identify individuals who are receiving or who at any time have received, that

**BILL**

1 are created in the course of providing services to individuals for mental illness,  
2 developmental disabilities, alcoholism, or drug dependence.

3 **SECTION 3.** 51.30 (1) (b) of the statutes is amended to read:

4 51.30 (1) (b) “Treatment records” include the registration and all other records  
5 concerning individuals who are receiving or who at any time have received that are  
6 created in the course of providing services to individuals for mental illness,  
7 developmental disabilities, alcoholism, or drug dependence ~~which~~ and that are  
8 maintained by the department, by county departments under s. 51.42 or 51.437 and  
9 their staffs, and by treatment facilities. ~~Such~~ Treatment records do not include notes  
10 or records maintained for personal use by an individual providing treatment services  
11 for the department, a county department under s. 51.42 or 51.437, or a treatment  
12 facility, if ~~such~~ the notes or records are not available to others.

13 **SECTION 4.** 51.30 (4) (b) 8. of the statutes is amended to read:

14 51.30 (4) (b) 8. ~~To a licensed physician who has determined that the life or~~  
15 ~~health of the individual is in danger and that treatment without the information~~  
16 ~~contained in the treatment records could be injurious to the patient's health. Such~~  
17 ~~disclosure~~ For treatment of the individual in a medical emergency if the individual's  
18 health care provider is unable to obtain the individual's informed consent because  
19 of the individual's condition or the nature of the medical emergency. Disclosure  
20 under this subdivision shall be limited to that part of the records necessary to meet  
21 the medical emergency.

22 **SECTION 5.** 51.30 (4) (b) 8g. of the statutes is created to read:

23 51.30 (4) (b) 8g. To health care providers in a related health care entity, if  
24 necessary for the treatment of the individual. In this subdivision, “related health  
25 care entity” means one of the following:

current

# BILL

a. An entity that is within a clinically integrated care setting in which individuals typically receive health care from more than one health care provider.

b. An organized system of health care in which the health care providers hold themselves out to the public as participating in a joint arrangement and jointly participate in activities.

**SECTION 6.** 51.30 (9) (a) of the statutes is amended to read:

51.30 (9) (a) Any person, including the state or any political subdivision of the state, violating this section shall be liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not more than \$1,000 for each violation and such costs and reasonable actual attorney fees as may be incurred by the person damaged. ~~A custodian of records incurs no liability under this paragraph for the release of records in accordance with this section while acting in good faith.~~

**(END)**

## Kennedy, Debora

---

**From:** laurie.kuiper@aurora.org  
**Sent:** Monday, February 27, 2006 9:59 AM  
**To:** Buschman, Sara; Kennedy, Debora  
**Cc:** nancy.vogt@aurora.org  
**Subject:** Revision to LRB3958/4

Sara & Debra:

Based on her email below, Nancy Vogt agrees with the language that you and Debora Kennedy proposed to define which staff should have access to a patient's medical record. It might be a good idea to incorporate this language into the bill and move forward with a /5 draft. If we need changes after that we can do it through amendments. Does this sound ok to you?

Laurie Kuiper  
Director of Government Relations  
Aurora Health Care  
Phone: (414) 647-6390  
E-mail: laurie.kuiper@aurora.org

2/24/06

Sara,

I'm not sure I addressed your question left on my voice mail when we spoke the other day. You had mentioned that Debra Kennedy had drafted language to include the staff (or individuals under the supervision of the health care provider). I'm fine with the language you proposed, but agree we should only use "current" once.

I just wanted to make sure I hadn't left this unanswered.

Thanks.

Nancy Vogt, RHIT, CHP  
Aurora Health Care  
Chief Privacy Officer  
(414) 647-3115

02/27/2006

## TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE:

2/28/06

CONVERSATION  
WITH:

Sara Buschman

OF:

Strachota's office

TELEPHONE NO:

4-8486

REGARDING LRB #  
OR DRAFT TOPIC:

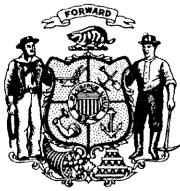
3958/4

INSTRUCTIONS:

Redraft:

① 51.30(4)(b) 8. "to a health care provider who is  
otherwise unable"

② 51.30(4)(b) 8g. Add: <sup>after "entity"</sup> "or any person  
acting under the supervision of such a  
health care provider who is involved with  
an individual's care."



TODAY  
State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-3958/45

DAK:lmk:rs

↑  
stays

## 2005 BILL

ReGen ✓

1 AN ACT *to renumber and amend* 51.30 (1) (a); *to amend* 51.30 (1) (b), 51.30 (4)  
2 (b) 8. and 51.30 (9) (a); and *to create* 51.30 (1) (ag) and 51.30 (4) (b) 8g. of the  
3 statutes; **relating to:** registration and treatment records for services for  
4 mental illness, developmental disability, alcoholism, or drug dependence,  
5 exceptions to confidentiality for treatment records, and a good faith exception  
6 to liability for release of records by a record custodian.

---

### *Analysis by the Legislative Reference Bureau*

Under current law relating to mental health, developmental disability, alcoholism, and drug dependence, "registration records" are defined to include all records of the Department of Health and Family Services (DHFS), county departments of developmental disabilities services and community programs, treatment facilities, and other persons who provide services to those entities, that identify individuals who are receiving or have received services for mental illness, developmental disability, alcoholism, or drug dependence. "Treatment records" are defined to include registration records and all other records concerning individuals receiving or who have received the services; however, treatment records do not include notes or records maintained for personal use by a treatment service provider if the notes or records are not available to others. Treatment records are confidential and privileged to the subject individual, except that they may be released without the individual's informed consent to numerous persons and in numerous



**BILL**

circumstances. One of these exceptions concerns release to a licensed physician who determines that the life or health of the subject is in danger and that treatment without the information in the treatment record could be injurious to the subject's health. This exception is limited to that part of the records that is necessary to meet the medical emergency. Liability for damages applies to the violation of confidentiality of registration and treatment records. The liability includes, for a violation that is not knowing and willful, damages, exemplary damages of up to \$1,000 for each violation, costs, and reasonable actual attorneys fees. However, a custodian of records, while acting in good faith, does not incur this liability for the release of registration or treatment records in accordance with the exceptions to confidentiality.

This bill changes the definition of "registration records" to include all records of DHFS, county departments, treatment facilities, and other persons providing services to these entities that are created in the course of providing services for mental illness, developmental disability, alcoholism, or drug dependence, and changes the definition of "treatment records" similarly. The bill changes the exception concerning release of treatment records to a licensed physician in a medical emergency to provide the exception if a health care provider is unable to obtain the individual's informed consent because of the individual's condition or the nature of the medical emergency. Further, the bill creates an additional exception that applies to health care providers in a related health care entity, as defined in the bill, if necessary for the current treatment of the individual. Lastly, the bill eliminates the good faith exception to liability for release of registration or treatment records by a record custodian.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1        **SECTION 1.** 51.30 (1) (a) of the statutes is renumbered 51.30 (1) (am) and  
2 amended to read:

3        51.30 (1) (am) "Registration records" include all the records of the department,  
4 county departments under s. 51.42 or 51.437, treatment facilities, and other persons  
5 providing services to the department, county departments, or treatment facilities  
6 ~~which identify individuals who are receiving or who at any time have received, that~~  
7 are created in the course of providing services to individuals for mental illness,  
8 developmental disabilities, alcoholism, or drug dependence.

onto any person acting under the supervision of  
such a health care provider who is involved  
with an individual's care ↑

**BILL**

1       **SECTION 2.** 51.30 (1) (ag) of the statutes is created to read:

2       51.30 (1) (ag) “Health care provider” has the meaning given in s. 146.81 (1).

3       **SECTION 3.** 51.30 (1) (b) of the statutes is amended to read:

4       51.30 (1) (b) “Treatment records” include the registration and all other records  
5       concerning individuals who are receiving or who at any time have received that are  
6       created in the course of providing services to individuals for mental illness,  
7       developmental disabilities, alcoholism, or drug dependence ~~which~~ and that are  
8       maintained by the department, by county departments under s. 51.42 or 51.437 and  
9       their staffs, and by treatment facilities. ~~Such~~ Treatment records do not include notes  
10      or records maintained for personal use by an individual providing treatment services  
11      for the department, a county department under s. 51.42 or 51.437, or a treatment  
12      facility, if ~~such~~ the notes or records are not available to others. *otherwise*

13      **SECTION 4.** 51.30 (4) (b) 8. of the statutes is amended to read:

14      51.30 (4) (b) 8. ~~To a licensed physician who has determined that the life or~~  
15      ~~health of the individual is in danger and that treatment without the information~~  
16      ~~contained in the treatment records could be injurious to the patient's health. Such~~  
17      ~~disclosure~~ For treatment of the individual in a medical emergency if a health care  
18      ~~provider is unable to obtain the individual's informed consent because of the~~  
19      ~~individual's condition or the nature of the medical emergency. Disclosure under this~~  
20      ~~subdivision shall be limited to that part of the records necessary to meet the medical~~  
21      ~~emergency.~~  
*who*

22      **SECTION 5.** 51.30 (4) (b) 8g. of the statutes is created to read:

23      51.30 (4) (b) 8g. To health care providers in a related health care entity, if  
24      necessary for the current treatment of the individual. In this subdivision, “related  
25      health care entity” means one of the following:

*or to any person acting under the supervision  
of such a health care provider involved with  
an individual's care* *who is*

# BILL

- a. An entity that is within a clinically integrated care setting in which individuals typically receive health care from more than one health care provider.

b. An organized system of health care in which the health care providers hold themselves out to the public as participating in a joint arrangement and jointly participate in activities.

**SECTION 6.** 51.30 (9) (a) of the statutes is amended to read:

51.30 (9) (a) Any person, including the state or any political subdivision of the state, violating this section shall be liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not more than \$1,000 for each violation and such costs and reasonable actual attorney fees as may be incurred by the person damaged. ~~A custodian of records incurs no liability under this paragraph for the release of records in accordance with this section while acting in good faith.~~

**(END)**

**Northrop, Lori**

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**From:** Buschman, Sara  
**Sent:** Thursday, March 02, 2006 3:19 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 05-3958/5 Topic: Mental health treatment and registration records

Please Jacket LRB 05-3958/5 for the ASSEMBLY.